

## REMARKS

Claims 11-20 were pending in the application at the time the Office Action was mailed. Claims 18-20 have been withdrawn as being directed to a nonelected invention. Claims 11-17 were rejected. No claims were allowed.

Upon entry of this Response, claim 11 will have been amended. The claim amendment is fully supported by the original disclosure; claim 11 will have been amended to include the limitations of claims 15 and 16. No claims will have been added. Claims 15 and 16 will have been canceled. No new matter will have been introduced. Although no fees are believed due, the Commissioner is hereby authorized to charge any deficiency or credit any surplus to Deposit Account No. 14-1437.

The amendments presented herein have been made solely to expedite prosecution of the instant application to allowance and should not be construed as an indication of Applicants' agreement with or acquiescence to the Examiner's position. Accordingly, Applicants expressly maintain the right to pursue broader subject matter through subsequent amendments, continuation or divisional applications, reexamination or reissue proceedings, and all other available means. The amendments and rejections are addressed below in more detail.

### Claim Rejections - 35 U.S.C. § 103

In the Office Action, claims 11-17 remain rejected under 35 U.S.C. §103(a) as being unpatentable over International Public. No. WO 00/76458 to Golz-Berner et al. (hereinafter "Golz-Berner et al.") in view of US Patent No. 5,961,988 to Zastrow et al. (hereinafter "Zastrow et al."), US Patent No. 4,857,306 to Roller (hereinafter "Roller"), and US Patent No. 5,069,918 to Graf et al. (hereinafter "Graf et al."). Applicants respectfully disagree with this rejection, and assert that the combination of Golz-Berner et al., Zastrow et al., Roller, and Graf et al. would not result in the claimed invention and the combination does not render the claimed invention obvious. Claim 11 will have been amended herein to recite a "cosmetic and dermatological agent containing magnetic particles comprising 0.0001 to 2 wt. % of magnetically hard particles, selected from the group consisting of barium hexaferrite single crystals, strontium hexaferrite single crystals, samarium-cobalt particles and neodymium-iron-boron particles, the particle size ranging between 80 and 550 nm in each case and the particles' coercive force ranging from

80,000 to 1,600,000 A/m; and 0.0001 to 0.05 wt. % of a ground jade stone the particle size of which ranges between 50 and 95 nm; and cosmetic or dermatological auxiliary and carrier substances up to 100 wt. %, wherin said agent further contains 0.1 to 10 wt. % of a cosmetically acceptable solid electret selected from the group consisting of: polytetrafluoroethylene, fluoroethylenepropylene, polyvinylidene fluoride, amorphous fluoropolymer, tourmaline or a mixture thereof, the electret having a particle size ranging between 0.05 and 100  $\mu\text{m}$ , said electret having an induced permanent dipole moment and a permanent electric field whose field strength ranges between 500 and  $10^7 \text{ Vm}^{-1}$ .”

As amended, claim 11 will be directed to a cosmetic composition comprising magnetically hard particles, ground jade, and an electret. Based on the combination of Golz-Berner et al., Graf et al., Roller and Zastrow et al., the skilled person would not be motivated to arrive at such a cosmetic composition. When applied to the skin, the mixture of these ingredients in the claimed amounts unexpectedly provides a synergistic effect that results in an increased functional state of microcirculation, an improved adaptation width of microcirculation, and an increased immune defense by 15-30% when applied to the skin. Specification, paragraphs [0014] - [0016] and [0049]. By adding an electret, the skin cells' ability to absorb nutrients and active substances can be clearly enhanced, thus increasing the main activity of the remaining claimed agents even further (see paragraph [0031] of the application as filed).

The only cited reference that mentions jade (Roller) discloses use of jade only as a colorant in eye shadow and fails to even mention magnetically hard particles or barium hexaferrite single crystals, and the combination of cited references does not teach the limitation of ground jade stone particles ranging in size between 50 and 90 nm. Even if the skilled person would consider combining the teachings of Golz-Berner et al., Zastrow et al., Roller and Graf et al., the skilled person still would not arrive at the subject matter of the present invention since the prior art of record fails to disclose the required particle size of the ground jade, the prior art of record fails to motivate the skilled person to use jade at a concentration requested by present claim 1, and there is no motivation or suggestion in any of the cited references to combine one or more of them.

Further, the results of the claimed combination were unexpected. The specification as filed describes test results in which the claimed combination was shown to increase the functional state of microcirculation, improve the adaptation width of microcirculation, and increase immune

defence by 15-30% relative to a comparative composition that did not include ground jade stone. In stark contrast, none of the cited references disclose test results relating to circulation and immune system performance.

Based on the foregoing, the combination of Golz-Berner et al., Zastrow et al., Roller, and Graf et al. does not render the present invention obvious within the meaning of 35 U.S.C. 103. In order to establish a *prima facie* case of obviousness, there must be some implicit or explicit suggestion or motivation to modify the reference(s), and there must be a reasonable expectation of success. Applicants submit that the claimed combination and amount and size of active ingredients is neither disclosed nor suggested by the cited references. Furthermore, the fact that the combination of these active ingredients exhibits a synergistic effect with respect to increasing functional state of microcirculation, improving adaptation width of microcirculation, and increasing immune defense by 15-30% is not disclosed or suggested by the cited references. Accordingly, Applicants believe that the subject matter of claim 11 and all claims dependent thereon are currently in condition for allowance.

Accordingly, entry of this Response and withdrawal of this rejection is respectfully requested.

### **Conclusion**

Entry and consideration of this Response is respectfully requested. The claims as will have been amended herein are supported throughout the specification and are patentable over the prior art. No new matter will have been added. This application is now in full condition for allowance, and such action is respectfully requested.

If any issues remain outstanding, Applicants invite the Examiner to call the undersigned if it is believed that a telephone interview would expedite the prosecution of the application to an allowance.

Respectfully submitted,

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